

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 653 of 2007

Allahabad this the 19 day of 5, 2010

Hon'ble Mr. A.K. Gaur, Member (J)

1. H.S. Chauhan aged about 42 years S/o Shri B.S. Chauhan R/o 46 Civil Lines, Station Road, Jhansi.
2. J.P. Pandey aged about 43 years S/o Shri K.N. Pandey, R/o 1244, Civil Lines, Jhansi.
3. B.K. Seth, aged about 40 years S/o Shri P.K. Seth, R/o 692/3 A C behind Chandra Hotel, Jhansi.
4. R.K. Jain aged about 41 years S/o Shri G.C. Jain R/o 692/3 A behind Chandra Hotel, Jhansi.
5. R.P. Gupta, aged about 44 years S/o Shri R.K. Gupta, R/o in front of Prem Nagar Thana, Jhansi.
6. Shirish Upadhyaya, aged about 43 years S/o Late Shri Banmali Upadhyaya R/o 98 Ganesh Madia, Jhansi.
7. Syed Tanviruddin aged about 40 years S/o Shri Rafiuddin R/o 77 Baldeo Prasad Compound in front of Tehsil Jhansi.
8. Neeraj Garg aged about 41 years S/o Shri N.L. Agarwal R/o 200 Sadar Bazar, Jhansi.
9. Anoop Arjariya aged about 42 years S/o Shri R.D. Arjariya R/o 829 Bank Colony, Galla Mandi, Jhansi.
10. Satish Srivastava, aged about 41 years S/o Shri Ram Babu Srivastava R/o Ramjankipuram, Mehendi Bagh, Jhansi.
11. Sarvesh Srivastava aged about 40 years S/o Shri K.N. Srivastava R/o 1397/5, Sharda Mills, Antia Tal, Jhansi.
12. D.K. Sachan, aged about 41 years S/o Shri K. Sachan, R/o Sipri Bazar, Jhansi.
13. Mithlesh Khare, aged about 42 years S/o Shri L.L. Khare R/o A-125 Deen Dayal Nagar, Jhansi.
14. R.P. Shukla, aged about 40 years, S/o Shri R.S. Shukla, R/o near Ras Bahar Colony, Sipri Bazar, Jhansi.

15. Rajendra Saxena aged about 41 years S/o Shri J.L. Saxena R/o 1346 IC Gondu Compound, Civil Lines, Jhansi.
16. Somkant Khare aged about 41 years S/o Shri K.C. Khare R/o A-48 Deendayal Nagar, Sipri Bazar, Jhansi.
17. Altaf Siddiqui aged about 43 years S/o Shri Shiraj Hussain R/o 530/8 Dhyan Chand Colony, Jhansi.
18. Brijesh Srivastava aged about 42 years S/o Shri R.S. Srivastava R/o 80/32B, Civil Lines, Jhansi.
19. Waheed Khan aged about 42 years S/o Shri Bassar Khan R/o 32 Tilyani Bazariya, Jhansi.
20. Syed Ashif Hussain, aged about 42 years son of Shri Manjural Hussain R/o 770 Khati Baba, Jhansi.
21. Rajiv Jain aged about 44 years S/o Shri H.C. Jain R/o Masiha Ganj, Arya Kanya Chauraha, Sipri Bazar, Jhansi.
22. R.S. Naik, aged about 42 years, S/o Shri P.L. Naik, R/o Vardan Vihar, Jhansi.
23. Pawan Jharkhariya aged about 44 years S/o Shri K.N. Jharkhariya R/o Toriya Narsingh Rao, Jhansi.
24. Lalji Awasthi aged about 46 years S/o Shri Sudarshan R/o Masiha Ganj, Jhansi.

Applicants**By Advocate: Sri R.K. Nigam****Vs.**

1. Union of India through Chairman, Railway Board, New Delhi.
2. General Manager, North Central Railway, Allahabad.
3. Divisional Railway Manager, North Central Railway, Jhansi.

Respondents**By Advocate: Sri Prashant Mathur****ORDER****By Hon'ble Mr. A.K. Gaur, Member (J)**

In the present O.A., applicant has sought the following relief

(s): -

- i) to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 22.06.2006 (Annexure A-1);
- ii) to issue another, writ, order or direction in the nature of mandamus thereby commanding the Respondents to immediately extend the benefit of notional seniority as well as facility of first class pass within the 4 corners of the mandatory provisions of rule 310 of the Indian Railway Establishment Manual as well as Railway Board's instructions already issued, for which a time bound direction is fervently prayed;

✓

- iii) *to issue further writ, order or direction in the nature of mandamus commanding the General Manager (Respondent No. 2) to maintain his decision already taken in favour of the humble petitioners vide letter dated 29.05.2006 and implement the same immediately;*
- iv) *to issue any other suitable order in favour of the humble petitioner as deemed fit by this Hon'ble Tribunal in the facts and circumstances of the case;*
- v) *to award cost of the petition in favour of the humble petitioners."*

2. The facts of the case, in brief, are that the applicants were duly selected as Ticket Collectors in pursuance of Employment Notice No. 1/84, after successfully competing the Written Test as well as Viva Voce test. They were placed on panel, however, due to some irregularities in the earlier panel of Employment Notice No. 2/80-81, the posting orders were issued to them in the year 1989. It is stated that the Railway Board has already taken decision that the persons who in spite of their earlier selection and empanelment were appointed at belated stage due to administrative reasons, have to be given notional seniority according to their earlier empanelment irrespective of their posting at belated stage, over and above the incumbents who have been appointed, selected and posted subsequently. Since the applicants have not been extended the benefit according to the mandatory provisions of Indian Railway Establishment Manual in spite of the decision already taken by Railway Board in the same circumstances, hence the applicants filed O.A. No. 1307 of 2005 – H.S. Chauhan and 23 others Vs. Union of India and another, in which the applicants had arrayed exclusively the General Manager (Respondent No. 2) as necessary party and the Chairman Railway Board (Respondent No. 1) was neither arrayed as party nor was concerned with the matter. It may be stated that those (Divisional Railway Manager/General Manager) who were arrayed as necessary parties have taken decision in favour

u/

of the applicants vide their letters dated 14.02.2006 and 29-05-2006.

3. In both the above letters the concerning authorities i.e. Divisional Railway Manager and General Manager have conceded the claim of the petitioners and no controversy regarding factual position as well as legal position has been raised from their end. It may be stated that the above decisions were taken in compliance of the Judgment dated 10.11.2005 passed by this Hon'ble Tribunal in O.A. No. 1307 of 2005, with the following direction: -

"I am, therefore, of the considered view that Respondent Nos. 1 & 2 should be directed to consider and dispose of the representation filed by the applicants within a period of 4 months from the date of copy of this order under intimation to the applicants. He is directed accordingly, Applicant is also given liberty to file a fresh copy of the representation along with copy of this if so advised."

4. As per the direction of this Tribunal the copy of the judgment was furnished to the General Manager as well as Divisional Railway Manager, by the applicants through their counsel's letter dated 04.12.2005. Copy of the above Judgment was also furnished by applicants vide their comprehensive representation dated 12.04.2006. After receipt of the impugned order dated 22.06.2006/Annexure A-I, the applicants moved yet another comprehensive representation duly addressed to the General Manager with the recommendatory note of Local M.L.A. (Shri Pradeep Jain 'Aditya'). However, the above crucial representation with glaring facts has not been disposed of so far, though it was mandatory on the part of Respondents to have taken appropriate decision on the statutory representation of the applicants. While ensuring compliance of the direction dated 10.11.2005 of this

✓

Tribunal in O.A. No. 1307 of 2005, the General Manager, North Central Railway, Allahabad principally agreed and conceded the claim of the applicants in his letter dated 29.05.2006/Annexure-III.

The relevant para of the letter is quoted below: -

"It is further mentioned that during the intervening period, prior to the appointment of applicants, certain appointments were made on compassionate ground/sports quota etc. and merely by virtue of the fact that they crossed the stage of Rs.5375/- so they were given the benefit of first class pass as they were appointed prior to 1-12-1987 and the appointments of applicants were frozen on administrative ground."

It is further admitted in the subsequent paragraph of the same letter that the facility of seniority and 1st class pass was extended to those incumbents who were selected, but their appointments were frozen and delayed on administrative account on the basis of the mandatory provisions of Rule 310 of the Indian Railway Establishment Manual. Extract of relevant paragraph of the aforesaid letter is reproduced as follows:-

"It is also matter of consideration that in terms of the Railway Board's letter No. E (W)97 PS5-1/30 dated 14-1-2000, the candidates selected by RRB/BB in the panel 2/80-81 and 1/82 are getting the benefit of 1st Class pass, even though they have joined Railway service after 10-11-1987. The CPO/Central Railway, Mumbai CST vide his letter No. HPB/706/RT/D/Policy dated 5-1-1990 has given the same benefit of 1st Class pass to the 'Prob. ASGM' of the same notification on the basis of aforesaid letter dated 14.12.2000 then why the other candidates (Ticket Collectors) of the same notification are to be deprived."

It is stated that admittedly the applicants belong to the same very panel, the incumbents of which were given notional seniority as well as First Class pass even though their postings were delayed on administrative account and they were assigned seniority from retrospective effect and were also extended the benefit of first class

✓

pass. It is alleged by the applicants that while giving the benefit of seniority as well as first class pass to the similarly situated persons, the action or decision taken against the applicants is clear violation of Articles 14 and 16 of the Constitution of India. According to the applicants there was absolutely no need to refer the matter to the Railway Board nor there was any requirement of law or fact that the Chairman, Railway Board may intervene in the matter. It is also stated by the applicants that in similar circumstances, the incumbents belonging to Railway Recruitment Board, Allahabad were given notional seniority as well as the benefit of First Class Railway Pass (Annexure A-VIII).

Further case of the applicants is that they have cleared the Written as well as Viva Voce test up to 1986 and the delay is on the part of the respondents in issuing the posting orders to the applicants in the year 1989. It is stated that even out of the earlier panel belonging to the Notification No. 1/80-81 (category No. 25) the persons whose appointments were materialized at much belated stage in the year 1988-89, were given the benefit of notional seniority and facility of first class pass (Annexure A-IX). It is claimed by the applicants that benefit of Rule 310 of the Indian Railway Establishment Manual was not extended to them while the same was extended to the counterparts similarly circumstanced. With the aforesaid facts and circumstances, the applicants have claimed for the relief (s) mentioned in first paragraph of this Order.

5. The respondents have filed their Counter Reply admitting the facts about appointment of the applicants as Ticket Collector against Employment Notice No. 01/84. However, they have mentioned that appointments of the applicants were delayed due to

✓

administrative reason. They have mentioned that some selected candidates of Notification No. 2/80-81 and 1/82 of Railway Recruitment Board, Mumbai were not given posting orders because of vigilance investigation pending against them. The respondents stated that the part of the candidates selected against the aforesaid Notifications, were given appointment in the year 1983 and they are enjoying the benefit of First Class pass, however, some of them were appointed in the year 1987 and they are not enjoying the benefit of first class pass. The respondents further relied upon the Rule stated that the employees who were appointed between 01.08.1969 to 31.03.1987 are enjoying the benefit of first class pass. ***The respondents further stated that the above anomaly was represented and considered by the Railway Board, and the Railway Board instructed vide letter dated 09.07.1999 by extending the benefit of entitlement of first class pass to those persons who had joined service later on due to administrative reasons.*** Further respondents stated that the facts of present case are totally different as the above benefit was extended to the employees who were selected under Notification No. 2/80-81 and 1/82. Regarding the facts, averred by the applicants in the O.A. that the General Manager and Divisional Railway Manager (P) had recommended their case for extending the benefit of first class pass, the respondents clearly stated that both the authorities had sent necessary instructions and letters to the Railway Board being policy matter. The respondents have stated that the impugned order is self-explanatory on the subject and passed after considering various instructions relating to the matter in dispute.

✓

6. In the Rejoinder Affidavit, the applicants have reiterated the facts mentioned in the O.A. However, they have stated that the respondents have to produce the relevant records before this Tribunal to elaborate the statement 'due to some administrative reason', the applicants were not given appointment prior to 31.03.1987-the cut off date for issuing the first class passes. The applicants further averred that as per Indian Railway Establishment Manual (Annexure-VI), the panel of selected candidates should be made functional within maximum two years from the date of publication of vacancies. They have also alleged that the incumbents of panel 1/81-82, who joined their respective posts after a gap of 7 years, were awarded the privilege of 1st Class pass.

7. Against the Rejoinder Affidavit, the respondents have filed the Supplementary Counter Reply, and applicants have filed the Supplementary Rejoinder Affidavit. No new facts have been stated in the aforesaid Supplementary Counter Reply and Supplementary Rejoinder Affidavit, which can be taken into consideration.

8. Heard Sri R.K. Nigam, learned counsel for the applicants and Sri Prashant Mathur, learned counsel for the respondents and perused the pleadings on record.

9. In the present O.A., the controversy which this Tribunal has to be resolved is whether the applicants are entitled for notional seniority and first class passes? The contentions of the applicants are that they were appointed in the year 1989 in pursuance to Employment Notice No. 1/84, after successfully competing the Written Test as well as Viva Voce test held in the year 1986. The

✓

reason behind delayed posting order is due to certain irregularities in the earlier panel of Employment Notice No. 2/80-81, the posting orders to the applicant could not be issued earlier. It is stated that the Railway Board has already taken decision that the persons who in spite of their earlier selection and empanelment were appointed at belated stage due to administrative reasons, have to be given notional seniority according to their earlier empanelment irrespective of their posting at belated stage, over and above the incumbents who have been appointed, selected and posted subsequently. Since the applicants have not been extended the benefit according to the mandatory provisions of Indian Railway Establishment Manual in spite of the decision already taken by Railway Board in the same circumstances, hence the applicants filed O.A. No. 1307 of 2005 - H.S. Chauhan and 23 others Vs. Union of India and another. It may be stated that those (Divisional Railway Manager/General Manager) who were arrayed as necessary parties have conceded the claim of the petitioners vide their letters dated 14.02.2006 and 29-05-2006. It is seen from the records that after receipt of the impugned order dated 22.06.2006/Annexure A-I, the applicants moved yet another comprehensive representation duly addressed to the General Manager with the recommendatory note of Local M.L.A. (Shri Prdeep Jain 'Aditya'), which has not been disposed of. It is stated that admittedly the applicants belong to the same very panel, the incumbents of which were given notional seniority as well as First Class pass even though their postings were delayed on administrative account and then they were assigned seniority from retrospective effect and they were also extended the benefit of first class pass.

✓

10. The respondents in their Counter Reply have not disputed the facts about appointment of the applicants as Ticket Collector against Employment Notice No. 01/84. However, they have mentioned that appointments of the applicants were delayed due to administrative reason. They have mentioned that some selected candidates of Notification No. 2/80-81 and 1/82 of Railway Recruitment Board, Mumbai were not given posting orders because of vigilance investigation pending against them. The respondents further relied upon the Rule stated that the employees who were appointed between 01.08.1969 to 31.03.1987 are enjoying the benefit of first class pass. The respondents further stated that the above anomaly was represented and considered by the Railway Board, and the Railway Board instructed vide letter dated 09.07.1999 by extending the benefit of entitlement of first class pass to those persons who had joined service later on due to administrative reasons. Further, respondents stated that the facts of present case are totally different as the above benefit was extended to the employees who were selected under Notification No. 2/80-81 and 1/82. Regarding the facts, averred by the applicants in the O.A. that the General Manager and Divisional Railway Manager (P) had recommended their case for extending the benefit of first class pass, the respondents averred that both the authorities only sought necessary instructions and sent letters to the Railway Board being policy matter. The respondents have stated that the impugned order is self-explanatory on the subject and passed after considering various instructions relating to the matter in dispute.

11. Having heard the learned counsel for the parties, I am of the view that ends of justice would better be served if the

comprehensive representation dated 11.02.2007 (annexure A-VII in the O.A.) preferred by the applicants, after receipt of the impugned order dated 22.06.2006/Annexure A-I, is directed to be disposed of within the stipulated period ^{of time.}

12. In view of the facts stated above and also the submission made by learned counsel for the parties, we direct the competent authority in the respondents' establishment to decide the representation dated 11.02.2007 (annexure A-VII in the O.A.) by a reasoned and speaking order within a period of three months from the date of receipt of a certified copy of this order. It is further provided that while deciding the representation of the applicants, this O.A. shall be treated as part of the representation.

13. With the aforesaid directions, O.A. stands disposed of. No order as to costs.

A.K. Gaur
(A.K. Gaur)
Member 'J'

/M.M/